

STATE OF MICHIGAN
COURT OF APPEALS

In re ALLEN H. PENOYER, TRUST.

AUDREY TAYLOR, CO-TRUSTEE and
EARLINE HEMMING, CO-TRUSTEE,

UNPUBLISHED
August 17, 2006

Petitioners-Appellees,

v

LOIS M. MELBERG,

No. 260018
Cheboygan Probate Court
LC No. 04-012499-TV

Respondent-Appellant.

Before: Zahra, P.J., and Neff and Owens, JJ.

PER CURIAM.

Respondent appeals as of right from an order removing respondent and petitioners as co-trustees of the Allen H. Penoyer Trust (the trust) and appointing a successor trustee. This case arises out of the petition to remove respondent as co-trustee. Under the provisions of the trust, the parties were to act as co-trustees. We affirm.

Respondent first argues that the probate court lacked jurisdiction in this case. We disagree. Whether a court has subject-matter jurisdiction is reviewed de novo as a question of law. *Davis v Dep't of Corrections*, 251 Mich App 372, 374; 651 NW2d 486 (2002).

A probate court's jurisdiction is limited and defined entirely by statute. *In re Wirsing*, 456 Mich 467, 472; 573 NW2d 51 (1998). MCL 700.1302 enumerates those circumstances in which a probate court has exclusive jurisdiction in relevant part as follows:

The court has exclusive legal and equitable jurisdiction of all of the following:

* * *

(b) A proceeding that concerns the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation, or termination of a trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary, including, but not limited to, proceedings to do all of the following:

(i) *Appoint or remove a trustee.* [Emphasis added.]

Thus, MCL 700.1302(b)(i) plainly vests a probate court with subject matter jurisdiction over the removal of a trustee.

Respondent relies on MCL 700.7201(2) of the Estates and Protected Individuals Code for the proposition that the provisions within the trust required the petition for removal to be arbitrated, specifically on language in that statutory provision that administration of a trust shall proceed “consistent with the terms of the trust, free of judicial intervention.” But this fails to consider that this language is expressly subject to the proviso within MCL 700.7201(2) that such trust administration is “[s]ubject to court jurisdiction as invoked by an interested person.” Thus, MCL 700.7201(a) plainly did not preclude the probate court from exercising jurisdiction in this case.

Respondent also relies on certain trust provisions as barring probate court jurisdiction. First, respondent relies on a trust provision that plainly requires any controversy between co-trustees “involving the construction or application of any of the terms” of the trust to be arbitrated. But this case does not involve construction or application of trust provisions. Rather, it involves petitioners’ request that the probate court remove respondent as a co-trustee based on its own authority independent of trust provisions. Thus, the arbitration provision relied on by respondent is simply inapplicable.

Respondent next relies on the an *in terrorem* provision of the trust implicitly arguing that the provision prevented the trial court from entertaining the petition. However, that provision was plainly created to discourage a party from challenging any provisions in the trust including those related to dispositions under the trust. Again, respondent’s reliance on the provision is misplaced because petitioners do not challenge any of the trust’s provisions.

Respondent finally argues that the trial court abused its discretion in removing her as co-trustee. We disagree. A probate court’s decision to remove a trustee is reviewed for an abuse of discretion. *Comerica Bank v Adrian*, 179 Mich App 712, 729; 446 NW2d 553 (1989). The trust specifically provides that co-trustees are required to unanimously agree in order to act.

The probate court did not abuse its discretion in removing respondent as co-trustee because the testimony presented clearly showed that the parties were incapable of agreeing and thus administering the trust. We conclude that the probate court had few options under the circumstances and appropriately elected to remove all three co-trustees and appoint a successor trustee.¹ Thus, given the evidence presented at trial, there was no abuse of discretion.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Donald S. Owens

¹ Only respondent appeals her removal as trustee. Petitioners agree that there was no error in removing the co-trustees pursuant to MCL 700.1302(b)(i).